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SUBJECT: COULD AN ELECTION-RELATED COURT CASE CUT AK

PARTY'S MAJORITY AND BOUNCE P.M. ERDOGAN?

(U) Classified by Ambassador Eric Edelman; reasons 1.5 (b, d).

11. (C) Summary: Supreme Appeals Court's likely confirmation of the sentence in an election fraud case against pro-Kurdish DEHAP raises the question whether High Election Board (YSK) will subsequently reallocate seats in Parliament, reducing AK's political dominance and enabling right-of-center DYP to enter as the third party in the legislature. Some speculate that YSK might also annul the March 2003 re-run of the election in Siirt province which gave Erdogan the Prime Ministry, thus stripping him of his position. Acting YSK chairman and other experts tell us reallocation and annulment are highly unlikely. Other sources disagree. AK contacts are mixed on whether AK would immediately call for early elections in such a case; political observers say a snap election under such circumstances would give AK an even greater majority. In any event the case is distracting Erdogan. End Summary.

Two Options in Case of Conviction

12. (U) Sept. 29 (postponed from Sept. 11) Turkish Supreme Appeals Court will begin review of a lower court ruling convicting pro-Kurdish DEHAP officials of falsifying documents required for participation in the Nov. 2002 national elections. Turkish political parties are required to organize in half the country's provinces, 41 of 81, by six months prior to elections in order to participate. DEHAP officials are accused of falsifying documents in order to give the appearance of meeting the requirement.

13. (C) Ahmet Hamdi Unlu, a senior member of the High Election Board (YSK), told us August 25 that the seven permanent members of YSK would have two options in the event of an appeals court ruling against DEHAP: (1) decide to maintain the Nov. election results in order to preserve the "administrative stability" of the election process, or (2) cancel DEHAP's votes and recalculate the vote percentage garnered by each party. Parties in Turkish elections must receive at least 10 percent of the popular vote nationwide to enter Parliament, a threshold met in November only by "conservative democratic" AK Party and left-of-center/statist CHP. A recalculation under option two would thrust a third party, right-of-center DYP, over the threshold; it is estimated AK would lose 42 of 368 seats, and CHP would lose 24 of 176, to DYP. Press coverage has featured a third option, holding new elections, but Unlu insisted this is not on the table. Unlu said he expects the court to issue a ruling soon after taking up the case.

YSK: Reallocation Seemingly Unlikely

14. (C) Unlu intimated to us he would vote against a reallocation of parliamentary seats for the following reasons:

-- Twenty five days before the Nov. election, Court of Appeals Chief Prosecutor tried to have DEHAP banned from the elections for falsifying documents. YSK rejected this because: (1) the prosecutor presented no legal documents or other evidence to prove his charges, and (2) election preparations were set (ballots printed, etc.) and a last-minute change would disrupt the process. Unlu emphasized that this decision was "legally sound."

-- For the YSK, issuing decisions is like adding bricks to a wall: once you've placed a brick you don't want to remove it.

-- Unfortunately, unlike in the U.S., he said, in Turkey

"people don't want to accept court rulings."

-- While insisting that YSK decisions are based solely on law, Unlu also said YSK recognizes that a decision against DEHAP will be perceived "by Europe and the world" as a reaction against "Kurdish nationalism."

Other Skeptics

15. (C) Sept. 8 Vehbi Dincerler, a former Minister and close advisor to the late P.M. and President Turgut Ozal and one of the wise men of Turkish politics, gave us four reasons why he thinks the YSK will reject any revision to the current parliamentary distribution. First, the Appeals Court decision concerns a criminal case; there is nothing in the law binding YSK to make a specific decision in line with the Appeals Court ruling; YSK will base its decision on its own legal authority, regulations, and politics. YSK is not even bound by its former decisions since it can argue that every case is different. Moreover, unlike decisions of the Constitutional Court, Appeals Court decisions are not binding on other cases. Second, YSK will decide according to (1) the constitutionally-enshrined concept of "administrative stability," under which it is incumbent on the authorities to seek to avoid disruptive interpretations; and (2) the concept that one cannot hold the national will as expressed at the ballot box hostage to the law. Third, the election law specifies a period for objecting to the certification of election results, which has long since expired. Fourth, Dincerler has heard from the immediate family of YSK chairman Tufan Algan that in a family conversation he expressed adamant opposition to any decision which would destabilize the country (Algan has subsequently been quoted in the press reaffirming that he is against any decision leading to "chaos").

16. (C) Having expressed his opinion, Dincerler nevertheless acknowledged when pressed that YSK might not be immune to voting its "conscience."

But It's Never Over 'til It's Over

17. (C) Seref Iba, deputy director of the parliamentary Legislation Department, has a different view. While agreeing that a new round of voting is "out of the question," he asserted that chances are better than 50 percent that when Parliament reconvenes in October, DYP M.P.s will be present. Iba claimed to be in close contact with YSK and DYP leaders (he took a call from a DYP member during our meeting). As AK gathers more power by approaching the two-thirds parliamentary majority needed to amend the Constitution, Iba implied that YSK is under pressure to reallocate seats. "The judiciary, academia, and the military in particular are skeptical about AK," he said.

18. (C) In recent separate conversations with us, two experienced AK party officials, Justice Minister/Spokesman Cemil Cicek and M.P. Ihsan Arslan, expressed a certain wariness about the unpredictability of decision-making, and felt the YSK's likely rulings were in doubt.

DYP: Panting at the Gate

19. (C) The DYP is anxious to achieve a "reallocation." Deputy Chairman Mehmet Ali Bayar gave us a spirited argument that it is incumbent on YSK to reallocate seats. Another DYP Chairman Salim Ensarioglu said that DYP has been fully behind the effort for months. He speculated that, if reallocation entailed canceling the Siirt result as well and thus stripping Erdogan of his prime ministership, it would not be easy for AK to react by calling for snap general elections: FonMin Gul would return as P.M. and be reluctant to give up power and M.P.s would not vote for elections since they would not yet have served the two years necessary to guarantee them a pension, he asserted.

110. (C) A respected journalist with exceptional access to politicians across the spectrum told us Sept. 8 that the YSK decision boils down to price. She recounted how she believed that P.M. Erdogan had confirmed to her the price for YSK's

approval of his candidacy in the Siirt election at \$3 million (a widely accepted rumor in Turkish political circles). She then said that former P.M. and DYP chairman Tansu Ciller, who would be among the DYPers to enter Parliament in any reallocation and is straining at the leash to return, had recently told her "the price for reallocation is \$6 million."

Comment

¶11. (C) YSK essentially ruled on this matter before, when it decided there were insufficient grounds to bar DEHAP from the November elections. The board was apparently swayed, in part, by the need to maintain consistency, a need which is no less present now. Moreover, some AK M.P.s and close observers of AK have told us without hesitation that any reallocation of seats through such a legal maneuver would lead AK to call snap early elections. All our contacts except DYP forecast that, given the Turkish electorate's propensity to vote against manipulative steps by the Turkish state Establishment, AK would return to parliament with 40%-45% of the vote instead of the 35% from November and an even greater majority.

¶12. (C) Bottom line: we think that YSK will deny reallocation. However, the uncertainty, now prolonged at least into October by the Appeals Court's decision to postpone the hearing until September 29, has made Erdogan even more cautious in taking decisions that might affect his or AK's popular standing, including questions of direct interest to the U.S.

EDELMAN